

NOTICE TO THE BAR

UPDATES TO MODEL CIVIL JURY CHARGES

The Supreme Court Committee on Model Civil Jury Charges (Committee) has approved the following list of revised Model Civil Jury Charges for use by the bar and trial courts. All approved Model Civil Jury Charges, including these revised charges, are available for downloading from the Judiciary's web site at <http://www.judiciary.state.nj.us/civil/civindx.htm>.

2.11 *Wrongful Discharge in Violation of a Clear Mandate of Public Policy* (Approved 3/91; Revised 7/10)

This charge was revised to:

- reflect the Court's opinion in *Tartaglia v. UBS Paine Webber*, 197 N.J. 81 (2008), which provides that in order to establish a wrongful discharge in violation of public policy, a plaintiff must prove that he/she sufficiently expressed his/her disagreement with the defendant's conduct to support the conclusion that his/her discharge violates the clear mandate of public policy. A complaint to an outside agency or a direct complaint to senior corporate management will ordinarily be sufficient. On the other hand, a complaint to an immediate supervisor or a passing remark to co-workers generally will not; and
- add a footnote indicating that although the New Jersey Supreme Court and Appellate Division have held that plaintiffs bringing claims under the *New Jersey Law Against Discrimination* (LAD), *New Jersey Conscientious Employee Protection Act* (CEPA), and *New Jersey Family Leave Act* (FLA) need only prove that the unlawful motive was a determinative factor in the adverse employment decision rather than the sole motivating factor, *see, e.g., Bergen Commercial Bank v. Sisler*, 157 N.J. 188, 207 (1999) (so holding with regard to LAD), *Donofry v. Autotote Systems, Inc.*, 350 N.J. Super. 276, 293 (App. Div. 2001) (so holding with regard to CEPA), and *DePalma v. Building Inspection Underwriters*, 350 N.J. Super. 195, 214 (App. Div. 2002) (so holding with regard to FLA), no reported New Jersey state or federal court decisions appear to have addressed that issue with regard to New Jersey common-law wrongful discharge claims.

4.10M *Bilateral Contracts — Anticipatory Breach* (Approved 5/98; Revised 7/10)

This charge was revised to include references to *Spring Creek Holding Company, Inc. v. Shinnihon U.S.A., Ltd.*, 399 N.J. Super. 158, 179 (App. Div.), *certif. denied*, 196 N.J. 85 (2008) and *Magnet Res., Inc. v. Summit MRI, Inc.*, 318 N.J. Super. 275, 288 (App. Div. 1998). These cases support the modern view that anticipatory repudiation includes situations in which "reasonable grounds support the obligee's belief that the obligor will breach the contract." The questions of whether plaintiff's asserted grounds for demanding assurance are reasonable, and whether defendant's assurance is adequate, are questions ordinarily determined by the fact-finder.

4.25

Anticipatory Breach of Contract (Approved 6/71; Deleted 7/10)

This charge has been deleted in its entirety since it was subsumed into Charge 4.10.

8.11C

Damages Charges – General — Loss of Earnings (Approved 12/88; Revised 7/10)

This charge was revised to include a reference to *Haywood v. Harris, et al.*, A-1120-09T-3, decided July 2, 2010, which addresses claims for future lost earnings in a case brought under *N.J.S.A. 39:6A-8a*, the “verbal threshold” statute. There, the Appellate Division mandated a revision to the charge requiring a specific instruction relating to future lost earnings in these cases. That decision also requires that the verdict sheet contain language in the appropriate case limiting “future lost earnings” to a “reasonable period of recuperation and recovery.”

Questions regarding any of these revised civil jury charges may be directed to Michelle V. Perone, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 984-5431; email michelle.perone@judiciary.state.nj.us.

/s/ Glenn A. Grant

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